

Remarks

Claims 1-39 are pending.

Claims 1-4, 13-16 and 25-31 are rejected under 35 U.S.C. § 103 as being obvious over U.S. Patent 6,148,003 to Van Dort (“Van Dort”) in view of U.S. Patent 6,353,847 to Maruyama, et al. (“Maruyama”). Claims 5-12, 17-24 and 32-39 are rejected under 35 U.S.C. § 103 as being obvious over U.S. Patent 6,148,003 to Van Dort in view of Maruyama in further view of U.S. Patent 6,546,454 to Levy, et al. (“Levy”). Applicant respectfully requests reconsideration of the application in light of the remarks below.

In order to establish a prima facie case of obviousness, the Office Action must show a motivation in the cited art for combining the art as suggested in the Office Action. M.P.E.P. §706.02(j). This requirement is missing here.

Among the limitations of independent claim 1, which are neither shown nor suggested in the art of record are:

A method for choosing a resource ... the first resource having an associated first load value; comparing the first load value to a predetermined threshold value to determine whether the first load value exceeds the predetermined threshold value

Among the limitations of independent claim 13, which are neither shown nor suggested in the art of record are:

A system for selecting a resource ... the first resource having an associated first load value; first comparing instructions for comparing the first load value to a predetermined threshold value to determine whether the first load value exceeds the predetermined threshold value

Among the limitations of independent claim 28, which are neither shown nor suggested in the art of record are:

A computer program product ... the first resource having an associated first load value; first comparing instructions for comparing the first load value to a predetermined threshold value to determine whether the first load value exceeds the predetermined threshold value

In rejecting claims 1, 13 and 28, the Office Action states:

“Van Dort teaches a method for choosing a resource, among a plurality of resources, for selecting a request, comprising:

randomly selecting a first resource among the plurality of resources in accordance with a predefined first random selection function (col. 10 line 47 – col. 11 line 13, Fig. 4).

Van Dort does not specifically teach the use of different load values, Maruyama teaches the first resource having an associate first load value (fig. 7, col. 1 lines 51-56):

comparing the first load value to a predetermined threshold value to determine whether the first load value exceeds the predetermined threshold value (col. 7 lines 23-28, col. 2 lines 7-13); and upon determining that the first load value does not exceed the predetermined threshold value, assigning the request to the first resource for servicing the request (col. 7 lines 29-33, col. 2 lines 20-22).” Office Action, pages 2-3.

The Office Action then states that “it would have been obvious” to modify Maruyama in light of Van Dort “because Maruyama’s method of assigning and comparing load values to resources would improve Van Dort’s system of distributing different resources by being able to tell with {sic} resource has exceed its predetermined threshold value.” However, the Office Action does not reference any part of Van Dort or Maruyama as showing such a motivation. The Examiner appears to have suggested a perceived benefit of a proposed combination of Van Dort and Maruyama, but not shown any motivation for actually making the combination.

The Office Action must explain the reasons why one of ordinary skill in the art would be motivated to select the references or teachings and combine them. See, e.g., In re Rouffet, 47 U.S.P.Q.2d 1453, 1459 (Fed. Cir. 1998). A principle must be identified, known by those with ordinary skill in the art, that suggests the claimed invention. Id. Inventions are frequently the process of combining prior art in a nonobvious manner. Id.

Applicants request that the Examiner set forth a reference which shows the above asserted motivation for combining the cited references or that the Examiner submit an Examiner's affidavit indicating that such motivation is known by one of ordinary skill in the art so that Applicants have the opportunity to rebut such assertion. See M.P.E.P. § 2144.03.

Without such information from the Examiner, a *prima facie* case of obviousness cannot be made and, as such, it is asserted that claim 1 is patentable over the art of record.

Moreover, the Applicants respectfully assert that the suggested motivation in combining Van Dort and Maruyama, even if known in the art, is not viable. Van Dort makes use of "priority information" exchanged between a controller and a resource. The controller uses the priority information to determine if the resource is "deemed to be available." Van Dort, Col. 9 line 10-17. As the resource is passing priority information to the controller regarding availability, the Van Dort algorithm works for the required need and there is never a need in Van Dort for a loading factor as the Office Action asserts is shown in Maruyama. Therefore, one with ordinary skill in the art would not be motivated to modify Van Dort to include the teachings of Maruyama.

Conversely, Maruyama is predicated on "load prediction." Maruyama Abstract. Load predictions are obtained based on reference load data which are "based on previously acquired measurement data" and also to "prepare a future load prediction for each of said processors." Col. 1 lines 46-57. In other words, Maruyama teaches being able to predict the right resource to use based on past behavior. Maruyama would not benefit from and does not need a randomly selected resource with a predefined first random selection function as the Office Action asserts is shown in Van Dort. Therefore, one with ordinary skill in the art would not be motivated to modify Maruyama to include the teachings of Van Dort.

Additionally, with respect to claims 13 and 28, the Examiner simply rejects claims 13-16 and 28-31 by perfunctorily stating they "are rejected based on the on the same rejections as claims 1-4 above." Office Action page 4. Claims 13 and 28 recite systems whereas claim 1 recites a method. Clearly, even if a prior art reference shows all of the elements in a method, that same reference does not necessarily anticipate every system for implementing the method. Further, as the Examiner has not even reviewed the elements of claims 13 and 28, the Examiner

cannot be certain that the systems in these claims have any relation to the processes of claims 1-4. All words in a claim must be considered in judging the patentability of that claim against the prior art. M.P.E.P. §2143.03. Therefore Applicants request either a Notice of Allowance or an Office Action in compliance with the rules.

Dependent claims 2-12, 14-24 and 29-39 include the above referenced limitations of independent claims 1, 13 and 28, respectively, and include additional recitations which, when combined with independent claims 1, 13 and 28 are also neither disclosed nor suggested in the art of record. It is asserted that these claims are patentable as well.

For example, among the limitations of dependent claim 5, which are neither shown nor suggested in the art of record are:

... applying a one-way hashing function to the request ... so as to select the first resource from among the plurality of resources.

Among the limitations of dependent claim 9, which are neither shown nor suggested in the art of record are:

... applying a one-way hashing function to the request ... so as to select the second resource from among the plurality of resources.

Among the limitations of dependent claim 17, which are neither shown nor suggested in the art of record are:

... applying a one-way hashing function to the request to ... so as to select the second resource from among the plurality of resources.

Among the limitations of dependent claim 21, which are neither shown nor suggested in the art of record are:

... applying a one-way hashing function to the request to ... so as to select the second resource from among the plurality of resources.

Among the limitations of dependent claim 32, which are neither shown nor suggested in the art of record are:

... applying a one-way hashing function to the request to ... so as to select the first resource from among the plurality of resources.

Among the limitations of dependent claim 36, which are neither shown nor suggested in the art of record are:

... applying a one-way hashing function to the request to ... so as to select the second resource from among the plurality of resources.

The Office Action, on page 6 admits that both the Van Dort and Maruyama references do not show the above limitations and points to various sections in column 7 of Levy. However, Levy does not discuss or imply the use of a one-way hashing function in the use of selecting a resource from the plurality of resources. Levy teaches the use of a one-way hashing function to generate a pre-defined one-way hash value used as "a message authentication code." Col. 7 lines 27-38. Levy uses the one-way hashing function to validate the source of received data, not to select a resource. Therefore, it is asserted that claims 5, 9, 17, 21, 32 and 36 are patentable over even a combination of Levy with Van Dort and Maruyama.

Among the limitations of independent claim 25, which are neither shown nor suggested in the art of record are:

A system for selecting a resource ... the first resource having an associated first load value, compare the first load value to a predetermined threshold value to determine whether the first load value exceeds the predetermined threshold value

In claim 25, the Office Action states:

"As per claim 25, Van Dort teaches a method for randomly selecting a first resource among the plurality of resources in accordance with a predefined first random selection function (col. 10 line 47–col. 11 line 13, Fig. 4)

Maruyama teaches a method of assigning a load value to a plurality of resource (col. 7 lines 23-28, col. 2 lines 7-13); and selection function when the first load value exceeds the predetermined threshold value, determined whether a second load value associate with the second resource (col. 6 lines 15-21, col. 1 lines 57-60). Office Action, page 5.

The Office Action does not recite any motivation in the prior art for combining the above referenced sections of Van Dort and Maruyama. In order to establish a *prima facie* case of obviousness, the Office Action must show a motivation in the cited art for combining the art. M.P.E.P. §706.02(j). The Office Action has not met that burden here.

Dependent claims 26 and 27 include the above referenced limitations of independent claim 25 and include additional recitations which, when combined with independent claim 25 are also neither disclosed nor suggested in the art of record. It is asserted that these claims are patentable as well.

Reconsideration of the rejection of claims 1-39 under 35 U.S.C. §103 is respectfully requested in light of the remarks above.

Respectfully submitted,



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 Date

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